

AMENDED IN ASSEMBLY JUNE 20, 2007

AMENDED IN SENATE MARCH 19, 2007

SENATE BILL

No. 105

Introduced by Senator Migden

January 17, 2007

An act to amend ~~Section 17021.7~~ of *Sections 17021.7 and 17024.5* of, and to add *Section 19136.13* to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 105, as amended, Migden. Taxation: registered domestic partners.
~~The~~

(1) *The* Personal Income Tax Law imposes taxes on taxable income and treats married couples and registered domestic partners the same in determining ownership of business interests and stock shares. Under existing franchise and income tax laws and the Corporation Tax Law, the marital status of a person is considered in determining the ownership of business interests and stock shares. The Katz-Harris Taxpayers' Bill of Rights provides taxpayers with specified protections for purposes of, among other things, determining their correct tax liability, and includes a release from a levy upon a finding that the levy threatens the health or welfare of the taxpayer or the taxpayer's spouse.

This bill would provide that a domestic partner or former domestic partner be treated as the spouse or former spouse of that taxpayer for purposes of applying the Personal Income Tax Law, specified franchise and income tax laws, the Corporation Tax Law, and the Katz-Harris Taxpayer's Bill of Rights Act, except where that treatment would result in the classification of a business entity under those laws that would be different than the classification of that entity for federal income tax

~~purposes~~ in specified treatment under federal income tax law, as provided.

(2) *The Personal Income Tax Law defines “adjusted gross income” with regard to registered domestic partners filing a joint return, for the purposes of computing limitations based upon that income, as the total of the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year of each registered domestic partner.*

This bill would revise the definition of “adjusted gross income” with regard to registered domestic partners, including former registered domestic partners, for purposes of computing limitations based upon that income, to mean the total of the adjusted gross income on a federal tax return computed as if the registered domestic partner or former registered domestic partner was treated as a spouse or former spouse, respectively, for federal income tax purposes and used the same filing status that was used on the state tax return for the same taxable year.

(3) *The Personal Income Tax Law imposes a penalty on a taxpayer who underpays an estimated income tax but specifies that a penalty may not be imposed for an underpayment in specified taxable years if the underpayment was created or increased by specified changes in law.*

This bill would prohibit the information of a penalty under that law for an underpayment in the 2007 taxable year if the underpayment was created or increased by a specified change in law.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17021.7 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 17021.7. (a) (1) For purposes of this part, the domestic partner
- 4 of the taxpayer shall be treated as the spouse of the taxpayer for
- 5 purposes of applying only Sections 105(b), 106(a), 162(l), 162(n),
- 6 and 213(a) of the Internal Revenue Code and for purposes of
- 7 determining whether an individual is the taxpayer’s “dependent”
- 8 or “member of their family” as these terms are used in those
- 9 sections.

(2) This subdivision shall apply to each taxable year beginning on or after January 1, 2002.

(b) (1) Except as otherwise provided, the domestic partner or former domestic partner of a taxpayer shall be treated as the spouse or former spouse of that taxpayer for purposes of applying provisions of this part, Part 10.2 (commencing with Section 18401), Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001), and for purposes of applying provisions of the Internal Revenue Code that are applicable for purposes of this part, Part 10.2, Part 10.7, or Part 11.

~~(2) A domestic partner shall not be treated as the spouse of a taxpayer if the treatment required by paragraph (1) would result in the classification of a business entity for purposes of this part, Part 10.2, or Part 11 that would be different than the classification of that business entity for federal income tax purposes.~~

(2) A domestic partner shall not be treated as the spouse of a taxpayer as required by paragraph (1) in the following circumstances:

(A) Where the treatment would result in the classification of a business entity for purposes of this part, Part 10.2, or Part 11 that would be different than the classification of that business entity for federal income tax purposes.

(B) Where the treatment required by paragraph (1) would result in disqualification for federal income tax purposes of a plan that otherwise qualifies under Section 401(a) of the Internal Revenue Code.

(C) Where the treatment would result in a tax-favored account that would not be qualified as a tax-favored account for federal income tax purposes. For purposes of this subparagraph, “tax-favored account” means an individual account, plan, or arrangement that is exempt from income tax under Chapter 1 of the Internal Revenue Code, including an individual retirement account, as described in Section 408 of the Internal Revenue Code, an Archer MSA, as described in Section 220 of the Internal Revenue Code, a qualified tuition program, as described in Section 529 of the Internal Revenue Code, and a Coverdell education savings account, as described in Section 530 of the Internal Revenue Code.

(3) The amendments made by the act adding this subdivision shall be operative for each taxable year beginning on or after January 1, 2007.

(c) For purposes of this section, the term “domestic partner” means an individual partner in a domestic partner relationship within the meaning of Section 297 of the Family Code.

SEC. 2. Section 17024.5 of the Revenue and Taxation Code is amended to read:

17024.5. (a) (1) Unless otherwise specifically provided, the terms “Internal Revenue Code,” “Internal Revenue Code of 1954,” or “Internal Revenue Code of 1986,” for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto as enacted on the specified date for the applicable taxable year as follows:

Taxable Year	Specified Date of Internal Revenue Code Sections
(A) For taxable years beginning on or after January 1, 1983, and on or before December 31, 1983.....	January 15, 1983
(B) For taxable years beginning on or after January 1, 1984, and on or before December 31, 1984.....	January 1, 1984
(C) For taxable years beginning on or after January 1, 1985, and on or before December 31, 1985.....	January 1, 1985
(D) For taxable years beginning on or after January 1, 1986, and on or before December 31, 1986.....	January 1, 1986
(E) For taxable years beginning on or after January 1, 1987, and on or before December 31, 1988.....	January 1, 1987
(F) For taxable years beginning on or after January 1, 1989, and on or before December 31, 1989.....	January 1, 1989
(G) For taxable years beginning on or after January 1, 1990, and on or before December 31, 1990.....	January 1, 1990

1 (H) For taxable years beginning on or after
2 January 1, 1991, and on or before December
3 31, 1991..... January 1, 1991
4 (I) For taxable years beginning on or after
5 January 1, 1992, and on or before December
6 31, 1992..... January 1, 1992
7 (J) For taxable years beginning on or after
8 January 1, 1993, and on or before December
9 31, 1996..... January 1, 1993
10 (K) For taxable years beginning on or after
11 January 1, 1997, and on or before December
12 31, 1997..... January 1, 1997
13 (L) For taxable years beginning on or after
14 January 1, 1998, and on or before December
15 31, 2001..... January 1, 1998
16 (M) For taxable years beginning on or after
17 January 1, 2002, and on or before December
18 31, 2004..... January 1, 2001
19 (N) For taxable years beginning on or after
20 January 1, 2005..... January 1, 2005
21

22 (2) (A) Unless otherwise specifically provided, for federal laws
23 enacted on or after January 1, 1987, and on or before the specified
24 date for the taxable year, uncodified provisions that relate to
25 provisions of the Internal Revenue Code that are incorporated for
26 purposes of this part shall be applicable to the same taxable years
27 as the incorporated provisions.

28 (B) In the case where Section 901 of the Economic Growth and
29 Tax Relief Act of 2001 (Public Law 107-16) applies to any
30 provision of the Internal Revenue Code that is incorporated for
31 purposes of this part, Section 901 of the Economic Growth and
32 Tax Relief Act of 2001 shall apply for purposes of this part in the
33 same manner and to the same taxable years as it applies for federal
34 income tax purposes.

35 (3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle
36 H (Repeal of Expired or Obsolete Provisions) of the Revenue
37 Reconciliation Act of 1990 (Public Law 101-508) modified
38 numerous provisions of the Internal Revenue Code and provisions
39 of prior federal acts, some of which are incorporated by reference
40 into this part. Unless otherwise provided, the provisions described

1 in the preceding sentence, to the extent that they modify provisions
2 that are incorporated into this part, are declaratory of existing law
3 and shall be applied in the same manner and for the same periods
4 as specified in the Revenue Reconciliation Act of 1990.

5 (b) Unless otherwise specifically provided, when applying any
6 provision of the Internal Revenue Code for purposes of this part,
7 a reference to any of the following is not applicable for purposes
8 of this part:

9 (1) Except as provided in Chapter 4.5 (commencing with Section
10 23800) of Part 11 of Division 2, an electing small business
11 corporation, as defined in Section 1361(b) of the Internal Revenue
12 Code.

13 (2) Domestic international sales corporations (DISC), as defined
14 in Section 992(a) of the Internal Revenue Code.

15 (3) A personal holding company, as defined in Section 542 of
16 the Internal Revenue Code.

17 (4) A foreign personal holding company, as defined in Section
18 552 of the Internal Revenue Code.

19 (5) A foreign investment company, as defined in Section 1246(b)
20 of the Internal Revenue Code.

21 (6) A foreign trust, as defined in Section 679 of the Internal
22 Revenue Code.

23 (7) Foreign income taxes and foreign income tax credits.

24 (8) Section 911 of the Internal Revenue Code, relating to United
25 States citizens living abroad.

26 (9) A foreign corporation, except that Section 367 of the Internal
27 Revenue Code shall be applicable.

28 (10) Federal tax credits and carryovers of federal tax credits.

29 (11) Nonresident aliens.

30 (12) Deduction for personal exemptions, as provided in Section
31 151 of the Internal Revenue Code.

32 (13) The tax on generation-skipping transfers imposed by
33 Section 2601 of the Internal Revenue Code.

34 (14) The tax, relating to estates, imposed by Section 2001 or
35 2101 of the Internal Revenue Code.

36 (c) (1) The provisions contained in Sections 41 to 44, inclusive,
37 and Section 172 of the Tax Reform Act of 1984 (Public Law
38 98-369), relating to treatment of debt instruments, is not applicable
39 for taxable years beginning before January 1, 1987.

1 (2) The provisions contained in Public Law 99-121, relating to
2 the treatment of debt instruments, is not applicable for taxable
3 years beginning before January 1, 1987.

4 (3) For each taxable year beginning on or after January 1, 1987,
5 the provisions referred to by paragraphs (1) and (2) shall be
6 applicable for purposes of this part in the same manner and with
7 respect to the same obligations as the federal provisions, except
8 as otherwise provided in this part.

9 (d) When applying the Internal Revenue Code for purposes of
10 this part, regulations promulgated in final form or issued as
11 temporary regulations by “the secretary” shall be applicable as
12 regulations under this part to the extent that they do not conflict
13 with this part or with regulations issued by the Franchise Tax
14 Board.

15 (e) Whenever this part allows a taxpayer to make an election,
16 the following rules shall apply:

17 (1) A proper election filed with the Internal Revenue Service
18 in accordance with the Internal Revenue Code or regulations issued
19 by “the secretary” shall be deemed to be a proper election for
20 purposes of this part, unless otherwise provided in this part or in
21 regulations issued by the Franchise Tax Board.

22 (2) A copy of that election shall be furnished to the Franchise
23 Tax Board upon request.

24 (3) (A) Except as provided in subparagraph (B), in order to
25 obtain treatment other than that elected for federal purposes, a
26 separate election shall be filed at the time and in the manner
27 required by the Franchise Tax Board.

28 (B) (i) If a taxpayer makes a proper election for federal income
29 tax purposes prior to the time that taxpayer becomes subject to the
30 tax imposed under this part or Part 11 (commencing with Section
31 23001), that taxpayer is deemed to have made the same election
32 for purposes of the tax imposed by this part, Part 10.2 (commencing
33 with Section 18401), and Part 11 (commencing with Section
34 23001), as applicable, and that taxpayer may not make a separate
35 election for California tax purposes unless that separate election
36 is expressly authorized by this part, Part 10.2 (commencing with
37 Section 18401), or Part 11 (commencing with Section 23001), or
38 by regulations issued by the Franchise Tax Board.

39 (ii) If a taxpayer has not made a proper election for federal
40 income tax purposes prior to the time that taxpayer becomes subject

1 to tax under this part or Part 11 (commencing with Section 23001),
2 that taxpayer may not make a separate California election for
3 purposes of this part, Part 10.2 (commencing with Section 18401),
4 or Part 11 (commencing with Section 23001), unless that separate
5 election is expressly authorized by this part, Part 10.2 (commencing
6 with Section 18401), or Part 11 (commencing with Section 23001),
7 or by regulations issued by the Franchise Tax Board.

8 (iii) This subparagraph applies only to the extent that the
9 provisions of the Internal Revenue Code or the regulation issued
10 by “the secretary” authorizing an election for federal income tax
11 purposes apply for purposes of this part, Part 10.2 (commencing
12 with Section 18401) or Part 11 (commencing with Section 23001).

13 (f) Whenever this part allows or requires a taxpayer to file an
14 application or seek consent, the rules set forth in subdivision (e)
15 shall be applicable with respect to that application or consent.

16 (g) When applying the Internal Revenue Code for purposes of
17 determining the statute of limitations under this part, any reference
18 to a period of three years shall be modified to read four years for
19 purposes of this part.

20 (h) When applying, for purposes of this part, any section of the
21 Internal Revenue Code or any applicable regulation thereunder,
22 all of the following shall apply:

23 (1) References to “adjusted gross income” shall mean the
24 amount computed in accordance with Section 17072, except as
25 provided in paragraph (2).

26 (2) (A) Except as provided in subparagraph (B), references to
27 “adjusted gross income” for purposes of computing limitations
28 based upon adjusted gross income, shall mean the amount required
29 to be shown as adjusted gross income on the federal tax return for
30 the same taxable year.

31 (B) In the case of registered domestic partners ~~filing a joint~~
32 ~~return under Section 18521 and former registered domestic~~
33 ~~partners~~, adjusted gross income, for the purposes of computing
34 limitations based upon adjusted gross income, shall mean the ~~total~~
35 ~~of the amount required to be shown as adjusted gross income on~~
36 ~~the a federal tax return for the same taxable year of each registered~~
37 ~~domestic partner computed as if the registered domestic partner~~
38 ~~or former registered domestic partner was treated as a spouse or~~
39 ~~former spouse, respectively, for federal income tax purposes, and~~

1 *used the same filing status that was used on the state tax return*
2 *for the same taxable year.*

3 (3) Any reference to “subtitle” or “chapter” shall mean this part.

4 (4) The provisions of Section 7806 of the Internal Revenue
5 Code, relating to construction of title, shall apply.

6 (5) Any provision of the Internal Revenue Code that becomes
7 operative on or after the specified date for that taxable year shall
8 become operative on the same date for purposes of this part.

9 (6) Any provision of the Internal Revenue Code that becomes
10 inoperative on or after the specified date for that taxable year shall
11 become inoperative on the same date for purposes of this part.

12 (7) Due account shall be made for differences in federal and
13 state terminology, effective dates, substitution of “Franchise Tax
14 Board” for “secretary” when appropriate, and other obvious
15 differences.

16 (i) Any reference to a specific provision of the Internal Revenue
17 Code shall include modifications of that provision, if any, in this
18 part.

19 *SEC. 3. Section 19136.13 is added to the Revenue and Taxation*
20 *Code, to read:*

21 *19136.13. No addition to tax shall be made pursuant to Section*
22 *19136 for any period before the date prescribed under Section*
23 *18566 for the filing of the return for the 2007 taxable year, with*
24 *respect to any underpayment of an installment for the 2007 taxable*
25 *year, to the extent that the underpayment was created or increased*
26 *by any provision of the act adding this section or Chapter 802 of*
27 *the Statutes of 2006.*

28 ~~SEC. 2:~~

29 *SEC. 4. This act provides for a tax levy within the meaning of*
30 *Article IV of the Constitution and shall go into immediate effect.*